

# report

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in Conflict

## Moving towards a Right to Land: The Committee on Economic, Social and Cultural Rights' Treatment of Land Rights as Human Rights





**Women Maasai from Narasha, a village located just outside Hell's Gate National Park, who were facing eviction from their land in 2014.**  
MRG/Lucy Claridge.

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### Minority Rights Group International

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MRG works with over 150 organizations in nearly 50 countries. Our governing Council, which meets twice a year, has members from 10 different countries. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and Peoples' Rights (ACHPR). MRG is registered as a charity and a company limited by guarantee under English law: registered charity no. 282305, limited company no. 1544957.

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# Abbreviations

CEDAW	Committee on the Elimination of Discrimination Against Women	RSG IDPs	Representative of the Secretary General on the Human Rights of IDPs
CESCR	Committee on Economic, Social and Cultural Rights	SR	Special Rapporteur
CO	Concluding Observations	SR HRDs	Special Rapporteur on the situation of human rights defenders
CRC	Committee on the Rights of the Child	SR on IDPs	Special Rapporteur on the rights of internally displaced persons
FPIC	Free, Prior and Informed Consent	SR on IPs	Special Rapporteur on the rights of indigenous peoples
GC	General Comment	SR SG	Special Representative of the Secretary-General
HRC	Human Rights Committee	UPR	Universal Periodic Review
HRD	Human Rights Defender		
IDPs	Internally Displaced Persons		
IHRL	International Human Rights Law		



# 1 Introduction

## The need for a right to land

In many countries, land rights and security of tenure constitute the basis for access to food, livelihoods, housing and development for a large percentage of the population, and are an important source of national food security. Without access to land, many people find themselves in a situation of great economic insecurity. Access and rights over lands are also frequently stratified on a hierarchical and segregated system where the poorest, least educated, and otherwise disadvantaged do not hold security of land tenure.

Control over the allocation of rights to land has historically been an instrument of oppression and colonization. A classic case is apartheid South Africa, where denial of land rights was a centrepiece of the apartheid regime. In many cases, marginalization, exclusion and discrimination in accessing land rights have fuelled movements to challenge and overturn an unjust status quo. For example, the extensive social movements of landless peasants throughout Latin and Central America are a reaction to the control of lands by wealthy and dominant elites. In the worst situations, inequality in land access has been an ingredient in violent conflicts. Long-standing concentration of land in the hands of the few, along with ongoing appropriations of land from local communities, has been a factor in insurgencies and revolutions across the globe.

Access, redistribution and guarantee of land rights are also crucial issues in post-conflict situations where old grievances need to be addressed and the risk of planting new seeds of conflict avoided. Aside from conflict situations, regulations and policies governing land rights are often at the heart of any major economic and social reforms. Land rights play a catalytic role in economic growth, social development and poverty alleviation.

At the same time, demands and competition for access to land are growing as individuals, communities, the private sector, the state and foreign actors seek to use and benefit from these resources for different, often opposing, purposes. Arable lands are becoming increasingly valuable due to greater investor interest, changes in agricultural production systems, population growth, migration, and environmental change. This increased pressure on land, including large-scale foreign agricultural investments in developing countries, has raised new issues regarding the

respect of the right to land of local populations by depriving them of essential lands to sustain their livelihoods and access to food.

Likewise, the recent focus on climate change-offsetting measures which has generated the acquisition of large tracts of lands to plant palm oil or other sources of bio-fuels is creating a pattern of acquisition of land for economic gains to the detriment of the local populations, who are losing their access to land to international investors.

Land rights are especially topical at the moment for different reasons. This includes the acceleration of large-scale land acquisitions by foreigners in developing countries, the so-called 'land grab', as well as the increased organization of landless peasants. Institutionally, the timing is also ripe, given OHCHR's current focus on land rights, including a recent report on the issue.<sup>1</sup> Organizations supporting human rights defenders (HRDs) have also called the international community to specifically pay attention to the situation of 'land rights defenders'. Moreover, land rights are an important component of the discussions taking place within the working group developing the draft Declaration on Peasants Rights and other People Working in Rural Areas.<sup>2</sup> All these activities are pointing towards the need for a clearer statement from one of the human rights treaty monitoring bodies on land rights.

## The UN Committee on Economic, Social and Cultural Rights and land rights

Throughout the last few years, the UN Committee on Economic, Social and Cultural Rights (CESCR) has adopted a number of statements referencing the need to respect land rights. As the Committee has consistently demonstrated in its General Comments (GCs) and Concluding Observations (COs) on states' practices, access to and security in the tenure of land are important aspects of economic, social and cultural life.

Ownership, use, control over and management of land all directly affect the enjoyment of a wide range of other rights. In this respect the Committee has emphasized the indivisibility and interdependency of rights and elaborated on the relationships between them. GCs on housing and

forced evictions, food, water, health and cultural life, among others, make explicit linkages to land. Land is in many cases necessary for the realization of other economic, social and cultural rights. Where access to land and associated resources such as forests or water is limited or tenure is insecure, the right to an adequate standard of living<sup>3</sup> encompassing housing, food and water may be jeopardized, as may the enjoyment of cultural rights. The enjoyment of other rights such as access to water and protection against land degradation, pollution or environmental hazards may also be necessary for those living on the land to realize its potential and to enjoy associated rights. A key principle in this regard is that property status including land ownership or tenure or place of residence should not inhibit exercise of other rights.<sup>4</sup> Civil and political rights may also come into play. For example, forced evictions often violate the right to life and security of person.<sup>5</sup> Land degradation and pollution can also impact on mortality rates, while those fighting for their land rights (such as tenants, landless movements or other community-based groups) are often subject to violent attacks, unlawful detention or restrictions on their freedom of expression, assembly or association.

## Aims of the report

Despite the focus on land rights from the different UN human rights institutions and notably CESCR, there is still no clear and comprehensive statement on the fundamental importance and the content of the right to land. Though land rights are recognized within the agenda of the Committee, there has been no official acknowledgment of land rights as human rights. Instead, land rights are viewed as part of the realization of other fundamental rights, such as the right to food or the right to water. It is time for the right to land to be recognized by governments as a stand-alone human rights issue.

To support such an effort, a small working group has systematically compiled and scanned all the general recommendations, general comments, and other statements by the Committee over the last 10 years to find out how and when land rights were referred to by the Committee. In addition, materials from across the UN human rights system were reviewed for references to land rights. These include other UN human rights treaty bodies, relevant special procedures of the Human Rights Council, recommendations to states under the Universal Periodic Review (UPR) process and the jurisprudence of the UN Human Rights Committee (HRC), as well as of the Inter-American and African Systems. It is intended as a resource that the Committee and other UN actors can draw on in framing a right to land. The aim of the research is both quantitative and qualitative: quantitative as it aims to show how substantial the references to land rights have been throughout the work of the CESCR, in particular; qualitative as the research aims to show (1) which rights are used and referred to in connection with land rights; (2) which rights-holders are specifically identified as requiring special attention when it comes to land rights. The research compiled by the working group is available as an online resource.

This report provides a synthesis of the already substantial guidance with regard to human rights and land issues elaborated by the CESCR in its GCs and consideration of reports and dialogue with states (as reinforced and supplemented by the other sources reviewed). It first focuses on those thematic issues (water, housing, health, etc.) that the Committee and other UN bodies, mechanisms and procedures have identified as related to and impacting on land rights, and then examines the specific groups that have been the focus of the Committee and others' work when considering these issues to date and which deserve special attention in the process of developing a General Comment.

## 2 Critical issues affecting land rights

### Overarching principles

#### Non-discrimination

According to fundamental principles of international human rights law (IHRL), access to land and protection of land rights must be realized on a *non-discriminatory* basis. This requires attention to the situation of vulnerable and marginalized individuals and groups, and may require temporary special measures to ensure that they are able to enjoy their rights on an equal basis with others.

While such measures are usually time-limited until discrimination has been addressed and substantive equality achieved, they may be permanent in special circumstances, including where ‘identity rights’ of minority and indigenous communities are concerned.<sup>7</sup> UN treaty bodies including the CESCR have paid special attention to discrimination against women, particularly with regard to land access and inheritance and exclusion from decision-making processes.

#### Self-determination

All policy, legislative and regulatory frameworks, programmes and projects impacting on land rights must therefore be informed by and respect principles of non-discrimination and equality and participation. The principle of self-determination which protects the ‘right of peoples, for their own ends, freely to dispose of their natural wealth and resources’<sup>8</sup> is also fundamental to the free pursuit of economic, social and cultural development, which is often linked to land.<sup>9</sup>

#### Progressive realization

In line with the principle of progressive realization, states have an obligation not only to act as expeditiously and effectively as possible towards the fulfilment of Covenant rights,<sup>10</sup> including land-related rights, but also to draw on international assistance and cooperation in the face of resource constraints.<sup>11</sup> The Committee has emphasized that it is particularly incumbent on those in a position to assist to do so.<sup>12</sup>

#### Horizontal protection, justice and redress

States must also protect against infringements of land-related rights by third party actors, including the private business sector.<sup>13</sup> The principles of accountability, access to

justice and the right to an effective judicial remedy are also essential for redress where violations of land rights have occurred.<sup>14</sup>

#### Effective participation and free, prior and informed consent

Effective participation in transparent decision-making processes that affect ownership, tenure and use of land is key in ensuring that the rights of individuals and communities are protected. In this respect, states’ parties should respect the principle of free, prior and informed consent (FPIC) of indigenous peoples in all matters covered by their specific rights,<sup>15</sup> including in relation to land. The CESCR has also extended the obligation to obtain FPIC to include minorities and other communities where preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk.<sup>16</sup>

### Housing and evictions

#### The link between land and housing and evictions

The CESCR has explicitly made the link between the right to adequate housing and security of land tenure, including protection from forced evictions, harassment and threats.<sup>17</sup> In reviewing states’ practice, the Committee has frequently expressed concern about the vulnerability of both urban and rural populations to threats and acts of expropriation, displacement, and forced evictions from the homes, lands and property that they own, use or occupy.

Victims are commonly small-scale farmers, indigenous peoples, pastoralists, members of minorities, scheduled castes and tribes, slum-dwellers and squatters, among others. Causes of displacement include large-scale development, infrastructure and urban renewal projects, concessions and corporate land purchases, land-grabbing, land reform, and conflict. In some cases forced population transfers have targeted human rights activists of specific groups such as Roma in a deliberate policy of separation and marginalization.<sup>18</sup> Displacement from lands can also result in rural to urban migration which puts greater pressure on urban land and housing.<sup>19</sup> The CESCR has clearly recognized the link between the requirement to be

protected from forced evictions, and the right to life. ‘While manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights such as the right to life.’<sup>20</sup>

It should also be noted that in rural and peri-urban areas, land is a determinant for realizing the right to adequate housing which is jeopardized by insecurity of tenure and forced evictions.<sup>21</sup> As the Special Rapporteur on the right to adequate housing (SR on housing) has stressed, land is a critical element of the human right to housing and inadequate housing is often the consequence of being barred access to land and common property resources.<sup>22</sup>

### **Laws, regulations, policy and planning**

As the CESCR makes clear, legislation provides the basis for the greatest possible security for occupiers of land.<sup>23</sup> States’ parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.<sup>24</sup> Legal frameworks and national land policies should fully integrate human rights and the right to adequate housing as a means to provide legal certainty in land ownership and protection against forced evictions.<sup>25</sup> States should therefore review existing legislation and regulations on evictions, resettlement and compensation to ensure compatibility with the Covenant.<sup>26</sup>

In line with the principles articulated by the GC, the SR on housing and country-specific mechanisms have made recommendations regarding the review and development of legislation and policies and the development of national land plans for rural and urban areas.<sup>27</sup> These should respect the traditional lands of indigenous peoples and be culturally sensitive.<sup>28</sup>

Where new approaches to land distribution and territorial planning are under consideration or being implemented, the SR on housing has pointed to the advantages of retaining positive aspects of traditional land allocation, where this provides access to land for housing purposes to all, regardless of social class and wealth.<sup>29</sup> The SR on housing has also recommended modifications to definitions of the right to private property in civil law to include the concept of the social function of property.<sup>30</sup> In addition, states should be aware of the human rights impacts of *land and property markets*, of the need to review the functioning of markets and for more rigorous intervention if necessary to control land and property speculation and bring down land prices.<sup>31</sup> A moratorium on evictions<sup>32</sup> and on any ruling, procedural or administrative act such as the introduction of new regional or local bills that can lead to eviction<sup>33</sup> may be necessary while legislation, policies and administrative action are developed in line with IHRL.<sup>34</sup>

Recommended measures to improve security of tenure made by the Committee and other UN mechanisms to regularise land title and promote access to land include: better circumscribing the possibility for the state to evict land users in the public interest;<sup>35</sup> formal registration of land ownership<sup>36</sup> and improved application of land laws guaranteeing better verification of land titles;<sup>37</sup> development of titling plans and mechanisms to prevent forced sales in rural location;<sup>38</sup> recognition of traditional forms of land tenure<sup>39</sup> and titling of land acquired according to traditional practices in rural areas;<sup>40</sup> and legalization of settlements built on public land.<sup>41</sup> Issuance of land certificates should be written in the name of both husband and wife.<sup>42</sup> Specific support measures may be required to safeguard and enhance access to agricultural lands for small farmers.<sup>43</sup> As the Committee has noted, in order for programmes aimed at providing security of tenure to be effective, states must ensure allocation of sufficient resources.<sup>44</sup>

### **Impact assessments**

With regard to infrastructure and development projects, the Committee recommends a human rights approach as set out in Basic Principles and Guidelines on Development-Based Evictions and Displacement,<sup>45</sup> developed by the SR on housing.<sup>46</sup> Such an approach should ensure the protection of land and housing rights including conduct of eviction and impact assessments prior to development projects.<sup>47</sup>

### **Process and principles**

Revisions of land-related policy and legislation as well as introduction of new programmes or projects should take place in consultation with those affected.<sup>48</sup> Genuine consultation with indigenous communities to resolve outstanding land claims is also required.<sup>49</sup> Awareness-raising amongst affected populations of their rights may be necessary<sup>50</sup> to ensure genuine consultation. States should also improve transparency and limit the risks of corruption of local officials in land deals.<sup>51</sup>

## **States’ obligations and recommended actions on forced evictions**

The Committee has clarified that forced evictions should only be carried out in exceptional circumstances in accordance with the relevant principles of international law,<sup>52</sup> provided for by national legislation and only for the purpose of promoting general welfare in a democratic society.<sup>53</sup> Legislation against forced evictions is an essential basis upon which to build a system of effective protection. It should include measures which (a) provide the greatest possible security of tenure to occupiers of land, (b)



conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out.<sup>54</sup>

Not only must the state itself refrain from forced evictions, it must ensure that the law is enforced against its agents or third parties who carry out forced evictions.<sup>55</sup> Legal domestic remedies should be available, including legal appeals aimed at preventing planned evictions or demolitions, legal procedures seeking compensation following an illegal eviction, and complaints against illegal actions carried out or supported by landlords.<sup>56</sup> Legal aid should be provided where possible.<sup>57</sup> Past evictions must also be properly investigated, perpetrators brought to justice and adequate compensation offered.<sup>58</sup>

### Process and principles

The Committee has observed that evictions should be based on the FPIC of those affected (with reference to the Bedouin in Israel and households subject to relocation necessary for city renewals in Azerbaijan). The SR of the Secretary General in Cambodia has similarly called for the ‘full and informed consent’ of those targeted for eviction. Where eviction is considered justified it may only be carried out in strict compliance with IHRL and general principles of reasonableness and proportionality.<sup>59</sup> Procedural protection and due process, including exploration of alternatives in consultation with those affected with a view to avoiding or minimizing use of force, must be respected.<sup>60</sup> In practice, the Committee has raised concerns of forced eviction, attacks on individuals and property, including demolition<sup>61</sup> without sufficient regard for process including notice, consultation or legal remedies<sup>62</sup> or provision of information on accessing remedies,<sup>63</sup> as well as use of force in the process.<sup>64</sup>

A key principle is that evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.<sup>65</sup> Where those affected are unable to provide for themselves, the state party must take all appropriate measures, to the maximum of its available resources, to ensure adequate resettlement or access to productive land is available.<sup>66</sup> However, expropriation of lands has often taken place without adequate compensation, or alternatives<sup>67</sup> including appropriate relocation measures<sup>68</sup> such as adequate infrastructure, services and agricultural or food assistance.<sup>69</sup>

### Persons and communities requiring special protection

Groups suffering disproportionately from forced evictions include women, children, youth, older persons, indigenous peoples, and ethnic and other minorities.<sup>70</sup> States should therefore monitor the situation, identify vulnerable and marginalized groups including those living in informal settlements and subject to forced evictions and

low income groups.<sup>71</sup> Disaggregated data on forced evictions is also necessary for monitoring purposes.<sup>72</sup>

## Food

### The link between land and food

Access to land and security of tenure are essential to the realization of the right to adequate food.<sup>73</sup> The CESCR has made this link, noting that the availability of food refers to the ‘possibilities either for feeding oneself directly from productive land or other natural resources or for or for well-functioning distribution’.<sup>74</sup> Restricted access or lack of access to, or use of, productive lands, including as a result of displacement, threatens livelihoods and the right to food for those such as small-scale farmers, indigenous peoples, herders or pastoralists who depend on food production from land.

Food insecurity especially in rural areas has been raised by the Committee as a matter of concern in several situations.<sup>75</sup> Land acquisition by foreign investors, including for agricultural purposes, has an adverse impact on the access of peasants and people living in rural areas to cultivable lands, as well as to their natural resources – which in turn has a negative impact on the realization of the right to food.<sup>76</sup>

Forcible evictions of vulnerable communities, including pastoralist and hunter-gatherer communities, from their traditional lands (for the purposes of, for instance, large-scale farming, creation of game reserves and expansion of national parks, mining, construction of military barracks, tourism and commercial game-hunting) have also resulted in a critical reduction in their access to land and natural resources, particularly threatening their livelihoods and their right to food.<sup>77</sup>

Cheap imports to address national food insecurity have led to displacement of local farmers to the detriment of their food security.<sup>78</sup> Any eviction not meeting requirements should be considered a violation of the right to food where families are deprived of the means to produce food.<sup>79</sup> The Special Rapporteur on the right to food (SR on food) has produced a set of minimum principles and measures to address human rights challenges in the context of large-scale acquisition and leases<sup>80</sup> and has also made a number of recommendations on improved access to land and security of tenure as essential for enjoyment of the right to food.<sup>81</sup>

Lack of access to land as a sufficient means of food production is often related to inequality where a large proportion of available land is concentrated in the hands of the few large scale producers. As the Committee has noted specifically with regard to situations where a disproportionate amount of land is used for non-food

production - for example, large quantities of arable land devoted to the production of bio fuels in Bolivia, agricultural land allocated to the cultivation of qat in Yemen or expansion of soybean cultivation in Paraguay - this jeopardizes traditional food resources of affected communities, undermines the availability of food for human consumption and leads to price increases.<sup>82</sup>

## Persons and communities requiring special protection

Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes in order to realize their right to food.<sup>83</sup> As the Committee has noted, where indigenous peoples' access to ancestral lands is threatened, so is their access to adequate food.<sup>84</sup> Even where a state faces severe resource constraints, measures should be undertaken to ensure that the right to adequate food is especially fulfilled for vulnerable population groups and individuals.<sup>85</sup> The Committee has raised concerns about the increase of food insecurity among disadvantaged and marginalized individuals or groups,<sup>86</sup> and about retrogressive measures such as reduction or removal of subsidies without alternative support measures that impact disproportionately on vulnerable and marginalized groups.<sup>87</sup>

## States' obligations and recommended actions

### Laws, regulations, policy and planning

The Committee has recommended that states tackle structural problems related to food insecurity by developing agricultural policies which prioritize the production of food and programme measures that protect national food production, including by improving security of land tenure, investing in small-scale peasant agriculture, implementing effective agrarian reform and providing incentives for small-scale producers.<sup>88</sup> Preventing discrimination in access to food or resources for food should include maintaining registries on rights in land, including forests.<sup>89</sup>

The Committee has also advised reform of the *real estate sector*, taking into account the vulnerability of rural landowners to seizure.<sup>90</sup> Restitution of lands taken from indigenous and Afro-Colombian peoples, as well as peasant communities, should also be ensured.<sup>91</sup> As part of their obligations to protect people's resource base for food, states parties should also take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food.<sup>92</sup>

The SR on food has made recommendations regarding more *equitable redistribution of land*, in accordance with UN FAO Voluntary Guidelines to Support the

Progressive Realization of the Right to Adequate Food in the Context of National Food Security, including the need to review obstacles to the acceleration of land redistribution processes.<sup>93</sup> In the context of the Universal Periodic Review (UPR), states have also made recommendations to ensure equity in land distribution and to assist farmers in rural areas to improve agricultural productivity, including by increasing funding and resources for farmers.<sup>94</sup>

The Committee has also encouraged states to address the adverse consequences of *climate change*, impacting the right to food, particularly for indigenous peoples, and to harness the potential of their traditional knowledge and culture (in land management and conservation).<sup>95</sup>

The SR on food has recommended the *review of tenure systems* with a view to the implementation, in the context of national food security, of FAO Voluntary Guidelines on Responsible Governance of Tenure Systems as they apply to Land, Fisheries and Forests. In this process, due account should be taken of the minimum principles and measures proposed to ensure that *large-scale investments* are made with due respect for all human rights so that the rights of land users, including indigenous communities, are better protected and a legal framework is established to avert the possibility of multiple land disputes in the future.<sup>96</sup> The SR has also advised reconsideration of *tax policies on concessions* of agricultural land and on the exploitation of natural resources (particularly forests and minerals) so as to optimize the revenue earned from the harnessing of these resources and to improve food security for vulnerable groups.<sup>97</sup>

### Impact assessments

Authorities should systematically perform *ex ante* impact assessments on the right to food when engaging in large-scale infrastructural projects, such as dams, with the participation of the communities affected<sup>98</sup> and ensure expropriations of farmer-lands do not have a negative impact on the right to food of those whose lands have been taken.<sup>99</sup>

### Process and principles

The formulation and implementation of national strategies for the right to food requires full compliance with the principles of accountability, transparency, people's participation, decentralization, legislative capacity and the independence of the judiciary. Good governance is essential to the realization of all human rights, including the right to food.<sup>100</sup> In this respect, states should ensure that the views of communities are taken into account in decisions concerning the concessions of the land on which they depend for their livelihood.<sup>101</sup>

The SR on food has also suggested holding a transparent and participatory dialogue on the 'opportunity

costs' of ceding land to investors intending to develop agro-industrial plantations, when providing local small farmers with improved access to land, through adequate state support, could be more effective in supporting local food security and reducing poverty.<sup>102</sup>

## Water

### The link between land and water

Water is necessary to produce food and is essential for securing livelihoods and enjoying certain cultural practices.<sup>103</sup> Sustainable access to water resources for agriculture is therefore necessary to realize the right to adequate food.<sup>104</sup> Access is likewise crucial for nomadic groups such as indigenous peoples, pastoralists and herders who rely on water sources for their livelihoods.<sup>105</sup>

### Persons and communities requiring special protection

The Committee has said that attention should be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology.<sup>106</sup> States should take steps to ensure women, in particular, are not excluded from decision-making processes.<sup>107</sup> Steps should also be taken to protect access to traditional water sources in rural areas from encroachment and unlawful pollution.<sup>108</sup>

Adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples should also be ensured.<sup>109</sup> Indigenous peoples' access to water resources on their ancestral lands should be protected against encroachment and pollution, and states should provide resources for indigenous peoples to design, deliver and control their access to water.<sup>110</sup> Access for nomadic and traveller communities to adequate water at traditional and designated halting sites should also be ensured.<sup>111</sup>

### States' obligations and recommended actions

A minimum core obligation of the states is to ensure the right of access to water on a non-discriminatory basis, especially for disadvantaged or marginalized groups.<sup>112</sup> No household should be denied the right to water on the grounds of their housing or land status.<sup>113</sup>

The obligation to respect includes refraining from engaging in any practice or activity that denies or limits equal access to adequate water, including arbitrarily interfering with customary or traditional arrangements or unlawfully diminishing or polluting water.<sup>114</sup> The obligation to protect requires state parties to prevent interference by third parties, including denying equal

access or polluting and inequitably extracting water resources.<sup>115</sup> The obligation to fulfil includes according sufficient recognition of this right in political and legal systems and a plan for equitable and sustainable use of water developed to ensure sufficient and safe water for present and future generations.<sup>116</sup> To this end, the Committee recommends adoption and implementation of a national strategy and plan of action.<sup>117</sup>

The Committee has expressed concern at the negative impact of *climate change* on the right to an adequate standard of living, including on the right to food and the right to water, affecting in particular indigenous peoples.<sup>118</sup> States have also addressed climate change issues in the context of the UPR specifically with regard to the obligation to request the assistance of competent UN agencies and programmes in the upgrading of land and water resources to reduce long-term vulnerability caused by drought, so allowing the population to satisfy its food and water needs.<sup>119</sup>

Other COs of the Committee have ranged from concern over the deliberate *destruction of infrastructure* including irrigation facilities<sup>120</sup> to recommended improvement of *water management* in the agricultural sector.<sup>121</sup> Countries' recommendations to one another have concerned access to land and water for pastoralists and conclusion of *regional agreements* to facilitate cross-border pastoralism<sup>122</sup> as well as the need to remedy violations of the land and *environmental rights* of indigenous and herder peoples, including the right to safe drinking water.<sup>123</sup>

### Process and principles

Policies, programmes, strategies and plans should respect principles of non-discrimination and peoples participation, including the right of individuals and groups to participate in decision-making processes that may affect the exercise of their right to water, and provide full and equal access to information.<sup>124</sup> They should be devised, and periodically reviewed, on the basis of participatory and transparent processes with particular attention to disadvantaged and marginalized groups, and monitoring of the extent of realization of the right.<sup>125</sup>

## Health

### The link between land and health

The right to health extends to the underlying determinants of health, such as food and nutrition, access to safe and potable water and a healthy environment.<sup>126</sup> Health is therefore linked to land and natural resources as a means of producing food. Land and health are also linked where land is integral to the health of individuals or communities who occupy or use it; for example, where

access to medicinal plants, animals and minerals is necessary to fulfil the health of indigenous peoples.<sup>127</sup>

With regard to such communities, the Committee has noted that the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.<sup>128</sup>

Pollution, contamination and degradation of lands, water and other natural resources can also impact directly on health (leading to disease and illness) and indirectly as traditional food sources of affected communities are jeopardized.<sup>129</sup> Insecurity of tenure, including in informal settlements and slums, is often associated with lack of infrastructure, limited services and hazardous living conditions which impact on health.<sup>130</sup> Evictions, displacements and relocations can also deprive people of access to health facilities and services.<sup>131</sup>

### **States' obligations and recommended actions**

States must refrain from unlawfully polluting air, water and soil and should formulate and implement national policies aimed at reducing such pollution.<sup>132</sup> They must also protect against infringements by third parties, including regulating the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others and enacting and enforcing laws to prevent pollution by extractive and manufacturing industries.<sup>133</sup> They should take appropriate steps to ensure that the private business sector and civil society are aware of, and consider the importance of, the right to health in pursuing their activities.<sup>134</sup>

Where necessary, states should allocate more resources to address environmental and enforce legislation.<sup>135</sup> Inter-ministerial coordination across policy areas such as housing, health and sanitation, including land policy, helps to ensure an integrated approach.<sup>136</sup>

#### **Process and principles**

With regard to the health impacts of extractive and mining activities specifically, the Committee has called on states' parties to (a) implement the Extractive Industries Transparency Initiative (EITI); (b) ensure that adequate sanctions are applied for breach of environmental clauses in extractive and mining contracts; (c) take corrective measures to address environmental and health hazards caused by extractive and mining activities; (d) ensure that the FPIC of the population is obtained in decision-

making processes on extractive and mining projects affecting them; and (e) ensure that these activities as well as the resources generated, bring about tangible benefits to the enjoyment of economic, social and cultural rights by the population.<sup>137</sup>

## **Work**

### **The link between land and work**

Access to land and security of tenure are often also fundamental to the realization of the right to work.<sup>138</sup> Limited access to land and related livelihood and employment opportunities can jeopardize this right, particularly in rural areas where alternatives to land-based livelihoods are lacking. In this regard, the Committee has noted high unemployment in rural areas<sup>139</sup> and lack of employment opportunities for low-skilled rural inhabitants as issues of concern.<sup>140</sup>

### **Recommended actions**

To address these problems, the Committee has recommended stimulation of rural development through ongoing agrarian reform and adoption of a national employment plan targeting the most affected groups.<sup>141</sup> For indigenous communities, allocation of land may be necessary in order to fulfil the right. In the case of the Batwa in Rwanda, the Independent Expert on minority issues<sup>142</sup> has recommended the allocation of land sufficient for them to engage in agriculture or livestock farming and for them to receive the necessary training.

Targeted poverty alleviation programmes should be developed with vocational training and assistance specifically targeted to their particular needs as a population group transitioning from a hunter-gathering livelihood.<sup>143</sup> With regard to Internally Displaced Persons (IDPs), the Representative of the Secretary General on the Human Rights of IDPs (RSG IDPs) has recommended development of a regional action plan including land allocations, livelihood and employment projects.<sup>144</sup>

## **Cultural life**

### **The link between land and cultural life**

Access to cultural life covers in particular the right of everyone – alone, in association with others or as a community – to follow a way of life associated with the use of cultural goods and resources such as land.<sup>145</sup> Necessary conditions for enjoyment of the right include the availability of nature's gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there.<sup>146</sup>



Displacement from lands and livelihoods can have cultural as well as economic impacts: for instance, where access to monuments or sacred sites is curtailed or traditional livelihoods such as hunting or fishing are no longer viable. The Committee has also drawn particular attention to the psychological and social significance of housing as a tool of social integration in its GC on the rights of older persons.<sup>147</sup> This could apply equally to land, especially for indigenous and other communities whose social structures are inextricably linked with the territories and resources they traditionally own use or occupy.

The Committee has on numerous occasions had cause to express concern about limitations on access to or displacement from lands (including due to land-grabbing and forcible expropriation) and the impacts on the realization of the right to cultural life and, ultimately, on their livelihoods and identity. Indigenous peoples, minorities, pastoralists and hunter-gatherers are especially affected.

Problems include: lack of recognition of land rights of indigenous peoples to their ancestral lands;<sup>148</sup> discrimination against them with regard to access to land ownership<sup>149</sup> and the protection of traditional ancestral and agricultural lands;<sup>150</sup> restrictions on land and resources and reduced access for vulnerable communities, including pastoralist and hunter-gatherer communities;<sup>151</sup> and failure to implement laws protecting the rights of indigenous peoples.<sup>152</sup>

Systematic exploitation of land and natural resources, including forests, prevents ethnic groups and indigenous peoples from maintaining their material, spiritual, cultural and social links with their natural environment and ancestral lands,<sup>153</sup> while concentration of lands in the hands of the few and the lack or slow pace of agrarian reform similarly limits access to lands significant for culture.<sup>154</sup> Other concerns relate to lack of consultation and failure to respect FPIC of indigenous peoples<sup>155</sup> and Afro-descendants;<sup>156</sup> lack of participation of affected communities in decision-making processes or dispossession, displacement and resettlement, including as a result of development projects;<sup>157</sup> and the physical risks posed by such projects to the preservation of archaeological and historical sites and artefacts, as well as restrictions on access to them.<sup>158</sup>

## States' obligations

Necessary conditions for the realization of the right to take part in cultural life on the basis of equality and non-discrimination include effective and concrete opportunities for individuals and communities to enjoy culture fully.<sup>159</sup> Furthermore, laws, policies, strategies, programmes and measures must be formulated and implemented by the state party for the enjoyment of cultural rights in a way that is acceptable, relevant and respectful of the culture of the individuals and

communities involved, including minorities and indigenous peoples. Consultations should be held with affected communities to this end.<sup>160</sup>

The obligation to protect requires states to prevent third parties interfering in the exercise of these rights.<sup>161</sup> States parties should therefore regulate the responsibility incumbent upon the corporate sector and other non-state actors with regard to the respect for the right to take part in cultural life.<sup>162</sup> The obligation to fulfil the right to take part in cultural life requires enactment of appropriate legislation and the establishment of effective mechanisms allowing persons, individually, in association with others, or within a community or group, to participate effectively in decision-making processes, to claim protection of their right to take part in cultural life, and to claim and receive compensation if their rights have been violated.<sup>163</sup>

States must respect and protect the values, heritage and rights of *indigenous peoples* associated with their ancestral lands and their relationship with nature, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.<sup>164</sup> States parties must therefore take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.<sup>165</sup>

States must respect and protect the cultural productions of indigenous peoples, including their traditional knowledge, natural medicines, folklore, rituals and other forms of expression. This includes protection from illegal or unjust exploitation of their lands, territories and resources by state entities or private or transnational enterprises and corporations.<sup>166</sup> Protection of intellectual property rights which are an expression of traditional culture and knowledge is also required.<sup>167</sup> Where indigenous lands and territories have been otherwise inhabited or used without their free and informed consent, the state must take steps to return them.<sup>168</sup>

States must likewise respect free access by *minorities* to their own culture, heritage and other forms of expression, as well as the free exercise of their cultural identity and practices,<sup>169</sup> which includes the right to follow a way of life associated with the use of land.<sup>170</sup>

## Recommended actions

Many recommendations to states by the Committee and other UN mandate holders and under the UPR relate to adoption and implementation of laws, policies and programmes aimed at eliminating discrimination against indigenous peoples and ensuring the realization of their land-related rights as an integral aspect of their culture. Review of existing frameworks and adoption of constitutional and statutory recognition of land and resource rights and effective political participation in line

with IHRL, including those relating to indigenous peoples, are the bedrock for effective policy.<sup>171</sup> Coherence, consistency and certainty in land and resource-related laws are essential.<sup>172</sup> Harmonization of customary and statutory systems may be necessary.<sup>173</sup> A moratorium on acts that can further impact on land rights such as granting of concessions may also be required while this review takes place.<sup>174</sup>

Specific recommendations include: implementation of measures contained in peace agreements related to agrarian reform and the devolution of communal indigenous lands;<sup>175</sup> elimination of strict requirements restricting communities access to and control of their traditional lands;<sup>176</sup> provisions for securing collective landholdings by communities in accordance with traditional land use patterns;<sup>177</sup> and further clarification and legal protection of Sami rights to land and resources, in particular by ensuring special protections for Sami reindeer husbandry, given the centrality of this means of livelihood to their culture and heritage.<sup>178</sup> Transfer of the administration of land-user rights and land use to the Sami people, along with studies on methods by which Sami land and resource rights could be established, taking into account the culture of the Sami community, have also been suggested.<sup>179</sup>

In some cases, reorientation of policies and laws regarding land use, conservation and wildlife management is required to accommodate the subsistence needs and cultural practices of communities that have been dispossessed of access to lands or resources.<sup>180</sup> Measures of reconciliation and redress should also restore or secure indigenous peoples' capacities to maintain connections with places and sites of cultural or religious significance.<sup>181</sup>

Support may also be required for communities who have had dispossessed lands restored to them but whose traditional cultures have been destroyed.<sup>182</sup> Establishment of a specific national mechanism to address complaints of the indigenous population in relation to the use of traditional land has also been recommended.<sup>183</sup>

### Cultural heritage

States also have obligations to respect and protect cultural heritage of all groups and communities in all its forms, at times of war or peace and in the event of natural disasters, including the care, preservation and restoration of historical sites, monuments, among others.<sup>184</sup> This obligation applies in particular to the most disadvantaged and marginalized individuals and groups, in economic development and environmental policies and programmes. Special attention should be paid to the adverse consequences of globalization in this respect.<sup>185</sup>

In this connection, the Committee has urged states to ensure the protection and preservation of all cultural, natural and archaeological heritage in its jurisdiction,<sup>186</sup> as

well as take measures for the proper implementation of relevant laws and regulations aimed at the protection of historical sites, with systematic assessment of the impact of development projects on their conservation.<sup>187</sup>

### Process and principles

Contribution to cultural life as an aspect of the right to take part in cultural life is supported by the right to take part in the development of the community to which a person belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights.<sup>188</sup> Everyone has the right to take part freely in an active and informed way, and without discrimination, in any important decision-making process that may impact his or her way of life or rights under article 15.<sup>189</sup> Effective mechanisms should be established allowing persons, individually, in association with others, or within a community or group, to participate effectively in decision-making processes.<sup>190</sup>

Indigenous peoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora.<sup>191</sup> States parties should respect the principle of FPIC of indigenous peoples in all matters covered by their specific rights.<sup>192</sup>

The CESCR has also extended the principle of FPIC to other communities where cultural practices and identity are threatened. In this respect, a core obligation of the state is to: 'Allow and encourage the participation of persons belonging to minority groups, indigenous peoples or to other communities in the design and implementation of laws and policies that affect them. In particular, states' parties should obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk.'<sup>193</sup>

For example, the FPIC of the population affected by extractive and mining projects should be obtained,<sup>194</sup> while relocation of households necessary for city renewal should not take place without prior consultations among affected households or without their informed consent.<sup>195</sup>

## Self-determination

### The link between land and self-determination

An aspect of the economic content of the right of self-determination is the right of peoples, for their own ends,

freely to dispose of their natural wealth and resources: 'In no case may a people be deprived of its own means of subsistence.'<sup>196</sup> The internal aspect of the self-determination of peoples embodies the rights of all peoples to pursue freely their economic, social and cultural development without outside interference.

In that respect there is a link with the participatory rights of all citizens to take part in the conduct of public affairs at any level. Governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin.<sup>197</sup> Governments should be sensitive towards the rights of persons of ethnic groups, particularly with regard to rights to preserve their culture (which may be related to land and natural resources as discussed above) and to share equitably in the fruits of national growth. Accordingly 'governments should also consider, within their respective constitutional frameworks, vesting persons of ethnic or linguistic groups comprised of their citizens, where appropriate, with the right to engage in such activities which are particularly relevant to the preservation of the identity of such persons or groups.'<sup>198</sup>

The rights to self-determination and to freedom of movement may be violated when those living under occupation or marginalized peoples are not allowed to dispose freely of their natural resources, including land, particularly when such resources are their means of subsistence.<sup>199</sup>

## Concerns

Issues specifically raised by the Committee under article 1 include: the adverse impacts of economic activities connected with exploitation of natural resources, including mining operations<sup>200</sup> and lithium exploitation<sup>201</sup> on the way

of life and subsistence of indigenous communities. Also of concern are: the impacts of land acquisition by foreign investors on the access of peasants and people living in rural areas to cultivable lands, as well as to their natural resources;<sup>202</sup> a rapid increase in land concessions leading to degradation of natural resources and displacement of indigenous peoples from their lands;<sup>203</sup> and the conversion of the Veddahs' traditional land into a national park, prohibiting access to their traditional hunting grounds and honey sites and leading to their socio-economic marginalization and impoverishment.<sup>204</sup>

The negative impacts of climate change on the right to an adequate standard of living, including on the right to food and the right to water, affecting in particular indigenous peoples,<sup>205</sup> and slow progress of land reform aimed at redressing the situation of indigenous peoples, including enactment of legislation to facilitate the demarcation of their land, have also been noted under article 1.<sup>206</sup>

The Committee has also expressed concern about the resettlement of nomadic herders without proper consultation and in most cases without FPIC,<sup>207</sup> and that Sami land rights in Sweden have not yet been resolved.<sup>208</sup>

## States' obligations and recommended actions

With regard to the disputed territory of Western Sahara, the Committee has consistently encouraged the state party to make every effort to find a clear and definitive solution to the issue of self-determination for the people of Western Sahara.<sup>209</sup> The Committee has also expressed concern about plans for the Regularization of Bedouin Housing and for the Economic Development of the Bedouin Population in the Negev.<sup>210</sup>

# 3 Groups and themes requiring special attention when considering land rights

## Women

The Committee has clearly stated that women have a right to own, use or otherwise control land and property on an equal basis with men, and to access necessary resources to do so.<sup>211</sup> It has also highlighted the need for guarantees of full and equal access to economic resources for women, including the right to inheritance and the ownership of land.<sup>212</sup>

General Recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW) further underline the rights of women to own, manage, enjoy and dispose of property and to benefit from processes of land redistribution on an equal basis with men.<sup>213</sup> Any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory.<sup>214</sup> The HRC likewise confirms that the capacity of women to own property may not be restricted on marital status or any other discriminatory ground.<sup>215</sup> Older women's rights to housing, land and property rights, including with regard to access to agricultural credit and loans and appropriate technology for older women farmers and small landholders, are also specifically addressed by CEDAW.<sup>216</sup>

Common concerns raised by the CESCR with regard to women's land rights include: discrimination in land ownership,<sup>217</sup> access to land, credit and inheritance,<sup>218</sup> and in cases of land disputes,<sup>219</sup> as well as a lack of rural women's participation in decision-making processes concerning land.<sup>220</sup>

The SR on indigenous peoples has also drawn attention to systematic exclusion of indigenous women, particularly rural women on matters of land reform policy in almost all countries visited.<sup>221</sup> Other Special Procedures mandate holders have highlighted the need to prioritize women's land rights<sup>222</sup> and for policies promoting women's equal access to land, property and inheritance.<sup>223</sup> These should address the disproportionately adverse impact that forced evictions, displacement and poor living conditions have on women.<sup>224</sup> Harmonization between provisions of IHRL and Islamic Law and practice in relation to women's equal rights to housing, land, property and inheritance in policy and legislation is also recommended.<sup>225</sup>

Training for rural women in land use and management and simplification of registration procedures,<sup>226</sup> as well as targeted assistance for IDPs, including female-headed households,<sup>227</sup> are among the support measures that can help improve women's situations. Recommendations made to states during the UPR process have focused on the need for: legislation and practical measures to eliminate discrimination against women in ownership, co-sharing and inheritance of land; facilitation of women's access to rural land ownership; and public awareness, empowerment and educational campaigns regarding women's land rights.

*A GC on the right to land would undoubtedly draw not only on the Committee's previous GCs and recommendations, but also those of CEDAW in setting out the key principles governing women's land rights and states' core obligations in this regard. Reports of UN Special Procedures may also be informative, particularly in terms of policy legislation and practical measures to ensure implementation of those rights.*

## Children

Children are identified by the CESCR as amongst those who suffer disproportionately from the practice of forced eviction,<sup>228</sup> traditionally face difficulties in exercising the right to water<sup>229</sup> and are affected by the health consequences of environmental pollution.<sup>230</sup>

Children's role as bearers and transmitters of culture has also been highlighted by the Committee.<sup>231</sup> This is particularly relevant for children from indigenous, minority herder or pastoralist communities for whom access to land and natural resources constitutes an important aspect of cultural rights. The SR on IPs has also highlighted the situation of children from indigenous communities where means of production and living conditions are jeopardized by encroachment on their traditional lands and lifestyles.<sup>232</sup> The Committee on the Rights of the Child (CRC) likewise recognizes the significance of the use of traditional lands to the culture and development of indigenous children.<sup>233</sup>

Child IDPs, particularly those separated from their parents and those who have taken on the role of breadwinners, are another group requiring specific attention and targeted assistance.<sup>234</sup> The CESCR has not directly addressed the situation of children's inheritance



rights, although this is obviously an important issue when it comes to land access, particularly for girls, adopted children, and those born out of wedlock who are often the subjects of discrimination. The CRC provides some guidance in this respect, particularly concerning the inheritance rights of orphans. In its GC on HIV/AIDS the CRC underlines the necessity for legal, economic and social protection to orphaned children to ensure their access to inheritance.<sup>235</sup> The importance of proof of identity as a basis for securing recognition before the law and safeguarding rights, particularly inheritance, and states' obligations in this regard are also addressed.<sup>236</sup>

States are particularly reminded to ensure that both law and practice support the inheritance and property rights of orphans, with particular attention to the underlying gender-based discrimination which may interfere with the fulfilment of those rights.<sup>237</sup> *In developing a GC on land, the CESCR might reference and elaborate on the CRC's comments specifically with regard to inheritance of land.*

## Indigenous peoples, minorities and other people who rely on the land

States have specific obligations arising from the special relationship indigenous peoples enjoy with their ancestral lands and other natural resources traditionally owned, occupied or used by them. As the HRC observes: 'culture manifests itself in many forms, including in a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.'<sup>238</sup>

Land rights can be fundamental to the self-determination of indigenous peoples and others whose way of life is inextricably tied up with the land. The CESCR has raised concerns under article 1 in its COs concerning the impacts on the way of life of indigenous peoples caused by natural resource exploitation, land acquisition by foreign investors, and land degradation as a result of concessions, among other factors.<sup>239</sup>

These observations are reinforced by the Special Rapporteur on the rights of indigenous peoples (SR on IPs) who has observed with regard to the Sami peoples, as for other indigenous peoples throughout the world, 'securing rights over land is fundamental to their self-determination, and is considered a prerequisite for the Sami people to be able to continue to exist as a distinct people.'<sup>240</sup>

The SR on IPs has specifically drawn attention to the denial of the right to self-government and the right of

indigenous peoples to make decisions regarding their land and communities. In the case of Costa Rica, problems include state institutions that regularly make decisions without notifying or consulting the indigenous communities they supposedly represent, deterioration in indigenous peoples' traditional representation procedures and lack of adequate representation on the national commission on indigenous affairs.<sup>241</sup> Similarly in Brazil, despite the government's recognition of the self-determination of indigenous peoples and implementation of a number of programmes to this end, indigenous peoples still do not adequately control their territories, in many cases, even when lands are demarcated and registered.<sup>242</sup>

Bearing in mind that the Committee's previous COs regarding the links between land, way of life and self-determination have not been limited solely to indigenous peoples, but also refer for instance to peasants and people living in rural areas,<sup>243</sup> the Committee may well consider in developing a GC that there are other categories of communities whose livelihoods and in some cases cultural practices depend on their relationship with their land. *It is therefore likely of interest to the Committee to clarify the extent to which the rights of non-indigenous communities to housing, food, water, and cultural life depend on access to land title/tenure, and whether this implies a 'right to land' for them.*

In addition to these substantive rights issues, the relevance of procedural rights such as those relating to FPIC could also be explored. In this respect, it may be noted that the Committee has already extended the obligation to obtain FPIC to include minorities and other communities where their way of life is at risk,<sup>244</sup> and extension of FPIC to non-indigenous communities is also included in some non-binding documents such as the FAO guidelines on FPIC.<sup>245</sup> *Given that the right to an FPIC process is a procedural right that serves to further the guarantee of substantive rights, the content of which can vary according to context, the Committee might consider the legitimacy of providing guidance on the link between FPIC and non-indigenous communities.*

## Human rights defenders

As noted by the Special Rapporteur on human rights defenders (SR on HRDs) in her 2011 report, HRDs working on land and environmental issues are often faced with attacks on their person, often by non-state actors and, as recorded by her in the case of extractive industries, many are killed.<sup>246</sup> The SR called upon states to take steps to rectify the stigmatization of the work of HRDs working on land issues, and to tackle the impunity in the case of their attackers by ensuring prompt and impartial investigations and effective remedies where appropriate.

As the SR on HRDs observes with regard to Brazil, violence against defenders is often rooted in conflicts over land and environmental protection and is perpetrated by powerful non state actors who, in certain instances, reportedly benefit from the collusion of local state authorities. A more proactive role for the states in mediating social conflict and in giving legitimacy to interventions by HRDs to promote and protect economic, social and cultural rights is advised.<sup>247</sup> Similarly in Honduras, efforts to mediate in land ownership disputes should be strengthened and consultations with indigenous peoples should be in line with international standards.<sup>248</sup> Governments should 'adopt policies to decriminalise social and land conflicts' and provide training and tools to security forces, ombudsman and judiciary to deal with those conflicts within a framework that respects the right to food.<sup>249</sup>

*In the drafting of a GC on Land, due regard should be given to the role of HRDs working on land issues and the obligation of states to ensure that they are protected against attacks on their person, discrimination or intimidation and to ensure that they have access to effective remedies. The articulation of a right to land and what it would entail in terms of its minimum core, violations and obligations of states would go a long way in providing HRDs working on land issues the necessary legal and policy support for their work.*

## IDPs and refugees

Observations made by the Committee regarding the situation of IDPs frequently relate to the illegal occupation by others of their housing, land and property, as well as a lack of compensation or alternative accommodation.<sup>250</sup> Common obstacles to return include a lack of access to land,<sup>251</sup> inadequate standards of living in rural areas<sup>252</sup> and a lack of livelihood opportunities.<sup>253</sup> Destroyed homes and infrastructure, including destruction of farming equipment,<sup>254</sup> and discrimination and security concerns also deter returnees.<sup>255</sup> Legal and procedural impediments to return include inadequate procedures for identifying IDPs,<sup>256</sup> short timeframes in which to make claims for return of lands and property, and backlogs in administrative or judicial processes.<sup>257</sup>

The RSG IDPs have recommended a flexible approach to durable solutions comprised of resettlement, return and local integration, including land-based solutions.<sup>258</sup> The principle of meaningful free choice in this regard and the right to restitution or compensation should be respected regardless of whether they choose to return, integrate locally or resettle.<sup>259</sup>

The CESCR and the RSG IDPs have made a number of specific land-related recommendations to states regarding the rights of IDPs concerning: formal

recognition of the newly displaced as IDPs under relevant national legislation and associated social benefits and legal protection, particularly with regard to security of tenure;<sup>260</sup> provision of documents and regularization of the situation of IDPs including land titles;<sup>261</sup> provision of specialized support to urban planning and national and regional development processes to ensure sensitivity to prevention and mitigation of internal displacement and the rights of IDPs;<sup>262</sup> and conclusion of agreements with private land owners on allocation of land plots for IDPs where they can settle with security of tenure.<sup>263</sup>

Attention of international and other actors should also be drawn to the handling of housing, land and property cases involving displaced parties by the courts, police and other authorities to prevent miscarriages of justice and protect the human rights of IDPs.<sup>264</sup> The setting up of claims mechanisms<sup>265</sup> and of national and local land commissions to address disputes over land is recommended.<sup>266</sup>

*Under the UPR, states have urged one another to ensure just settlement of property claims of displaced persons in conformity with the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles).<sup>267</sup> These will also be a key source in drafting a GC on land insofar as the Comment addresses the issue of displacement, return and restitution. States have also recommended the granting of land rights to refugees, including legislative action to ensure their right to inherit and register property.<sup>268</sup>*

## Relationships between rights-holders

Competition between different stakeholders over distribution, use, control and management of limited land and natural resources can often lead to disputes, particularly between those who depend on land for subsistence and others who wish to exploit it for other reasons including for profit.<sup>269</sup> Such disputes are often the cause of human rights violations, conflicts and violence.<sup>270</sup>

Rights violations can be further aggravated when there are no independent or functioning dispute resolution or grievance mechanisms that can identify effective remedies for land claims and against unlawful actions by state or private actors.<sup>271</sup> For example, the CESCR has raised concerns about unsettled claims over indigenous lands and national resources as sources of confrontation and conflict.<sup>272</sup>

Evictions may also be carried out in connection with conflict over land rights.<sup>273</sup> As noted above, displacement, including as a result of conflict and issues of return restitution and resettlement, are outstanding in many post-conflict situations.<sup>274</sup> In some cases, conflicts over

land may be exacerbated by several waves of displacement and returns.<sup>275</sup> The Committee has called on states to protect the rights of persons displaced by the conflict and to ensure their safety.<sup>276</sup>

Fostering a more equitable framework for the distribution, management and use of land with the full participation of the rights-holders concerned is not only a matter of principle, but has potential benefits for addressing grievances and for the resolution of disputes before they escalate into conflict.<sup>277</sup> The Committee has therefore emphasized the need for coherent and comprehensive legal frameworks, policies and administrative measures, as well as effective mechanisms to address conflicting land claims, resolve land-related disputes and provide effective remedy, including in cases of evictions and displacement.<sup>278</sup>

The SR on food has likewise raised concerns about unequal access to land as a source of conflict, noting the need to adopt legislation with objective criteria for the resolution of land conflicts, as well as create institutions to resolve existing disputes and conflicts over land and avert the possibility of future ones developing.<sup>279</sup>

Institutions may include a national land commission<sup>280</sup> or community-based land commissions, involving traditional leaders, provincial state officials and community representatives, in particular women, returnees and minority groups, to address local disputes over land.<sup>281</sup> Training and tools for security forces, ombudsman and judiciary to deal with such conflicts may also be required.<sup>282</sup>

It is important that policies and programmes, as well as any legal decision, including traditional ways of dispute resolution, take into account relevant international standards and gender equality.<sup>283</sup> For example, the Committee has found in some instances that lack of trust

in formal judicial systems has led to the use of informal dispute resolution mechanisms that can perpetuate discriminatory practices.<sup>284</sup> Awareness-raising of laws and available mechanisms can also be essential in settling inter-communal disputes.<sup>285</sup>

Common obstacles to the settlement of land disputes identified by the CESCR relate to problems with accessing or proving title.<sup>286</sup> In this connection, the SR on food has recommended review of tenure systems and measures to ensure security of tenure and improve access to land such as titling programmes, which can help limit the risk of future land conflicts.<sup>287</sup> However, as the SR on food has also argued, formal titling may not always be the most appropriate means to achieve security of tenure. Strengthening of customary land tenure systems and reinforcement of tenancy laws could more affectively improve protection of land users.<sup>288</sup>

It is important to note that not only should states ensure due process in matters relating to conflicts on land, displacement, eviction and other land-related issues, but this requirement also applies to international financial institutions and other actors dealing with land in their activities.<sup>289</sup>

*In developing a GC on land, the Committee might consider elaborating a means of addressing sources of dispute and conflict over land. In this respect, states' attention should be drawn to the guidance provided in the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security on ensuring that disputes are resolved before they degenerate into conflict.<sup>290</sup> The Pinheiro Principles, as mentioned above, are also a key point of reference for standards and practice when addressing competing claims and resolving or preventing new conflicts.*

## 4 Conclusion

As demonstrated in this report, the Committee has extensively addressed the land rights of individuals and communities in its GCs and COs to date, but has done so primarily in relation to the enjoyment of other economic, social and cultural rights. Building on this work, the time is now ripe for a General Comment on the Right to Land which would set out the linkages with other rights (as already clearly articulated in GCs on housing and evictions, food, water and cultural life, etc.), and the normative content of the right and states' obligations in this respect. In line with the Committee's approach in other GCs, examples of violations along with a clear articulation of duties and practical guidance with regard to implementation at national level would provide much-needed clarity for states in fulfilling their obligations with respect to the right to land.

The idea of a human right to land is slowly making progress. The former SR on housing, Miloon Kothari, recommended that the right to land be recognized in international law.<sup>291</sup> The former SR on food, Olivier De Schutter, in his 2010 report to the General Assembly of the United Nations, recommended that international human rights bodies consolidate the right to land and clarify 'the issue of land as a human right.'<sup>292</sup> A comprehensive CESCR GC on land rights would certainly be an important step in the right direction. It could be instrumental not only in providing clarity and guidance on the content and implementation of a human right to land, but also in raising awareness and increasing the visibility of this fundamental issue in support of the development of a strong human rights-based approach to land issues.



## 5 Additional resources

Please visit MRG's website, [www.minorityrights.org](http://www.minorityrights.org), for access to the comprehensive land rights research on key principles and special groups referenced in this publication.

# Notes

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- 8 General Comment 12, Right to Adequate Food, UN doc. HRI/GEN/1/Rev.6, para. 5.
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- 12 See, e.g., General Comment 15, The Right to Water, UN doc. E/C.12/2002/11, para. 38.
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- 15 *op. cit.*, para. 37. see also *Ángela Poma Poma v. Peru*, (2009), HRC communication no. 1457/2006, para. 7.6, which links FPIC to 'the admissibility of measures which substantially compromise or interfere with the culturally significant economic activities of a minority or indigenous community.'
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# working to secure the rights of minorities and indigenous peoples

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## Moving towards a Right to Land:

### The Committee on Economic, Social and Cultural Rights' Treatment of Land Rights as Human Rights

In many countries, land rights and security of tenure constitute the basis for access to food, livelihoods, housing and development for a large percentage of the population. Without access to land, many people find themselves in a situation of great economic insecurity. Access, redistribution and guarantee of land rights are also crucial issues in post-conflict situations where old grievances need to be addressed and the risk of planting new seeds of conflict avoided. However, socially just and inclusive land rights can play a catalytic role in economic growth, development and poverty alleviation.

Land is in many cases necessary for the realization of other economic, social and cultural rights. Throughout the last few years, the UN Committee on Economic, Social and Cultural Rights (CESCR) has adopted a number of statements highlighting the need to respect land rights, explicitly referencing them in relation other areas such as housing, forced evictions, food, water, health and cultural

life. Nevertheless, despite the focus on land rights from CESCR and other UN human rights institutions, there is still no clear and comprehensive statement on the fundamental importance and the content of the right to land. At present, land rights are still viewed as part of the realization of other fundamental rights, such as the right to food or the right to water.

It is now time for the right to land to be recognized by governments as a stand-alone human rights issue. To support such an effort, this report provides a synthesis of the already substantial guidance on human rights and land issues elaborated by the CESCR and other UN bodies, focusing on thematic issues such as water, health and housing that have been identified as related to and impacting on land rights, as well as those groups requiring special attentions, such as minorities, indigenous peoples, women, children, IDPs and refugees.

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